

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RYAN McFADYEN, MATTHEW
WILSON; and BRECK ARCHER

Plaintiffs,

vs.

DUKE UNIVERSITY; et al.

Defendants.

Case No.: 1:07-cv-00953

**DEFENDANTS', DAVID ADDISON, JAMES T. SOUKUP, KAMMIE MICHAEL,
& RICHARD D. CLAYTON,
MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT
FED. R. CIV. P. 12(b)(6)**

Defendants, David Addison, James T. Soukup, Kammie Michael & Richard D. Clayton, ("Defendants") respectfully move the Court, pursuant to FED. R. CIV. P. 12(b)(6), to dismiss Plaintiffs' Second Amended Complaint for failure to state a claim upon which relief can be granted. In support thereof, and pursuant to this Court's February 16, 2010 Order, (Docket # 115), Defendants incorporate the reasons set forth in their Brief in support of their original Motion to Dismiss, (Docket # 135), their Reply Brief in Support of their Motion to Dismiss, (Docket # 43), their Supplemental Brief in Support of their Motion to Dismiss, (Docket # 95), and their Memorandum of Subsequently Decided Authority, (Docket # 134).

Defendants note that in their Second Amended Complaint Plaintiffs eliminated causes of action against Defendants in their official capacity where the

City was named, as well as state law causes of action against Defendants, save for causes of action for malicious prosecution and intentional infliction of emotional distress. Thus, it is not now necessary for the Court to consider pages 14-16 (regarding official capacity claims) or pages 19-23 (regarding Causes of Action 16 and 19) in Defendants' initial brief (Docket # 43).

Because of the complexity of the causes of action at issue in this case, Defendants request oral argument be scheduled on their Motion to Dismiss pursuant to Local Rule 7.3(c)(1).

WHEREFORE, Defendants, Addison, Soukup, Michael & Clayton respectfully pray the Court that:

1. The Action against these Defendants be dismissed;
2. Judgment be entered for Defendants;
3. Plaintiffs have and recover nothing from Defendants; and
4. Defendants have such other and further relief as the Court shall deem just and proper.

Respectfully submitted, this the 10th day of March, 2010.

MAXWELL, FREEMAN & BOWMAN,
P.A.

By: /s/ James B. Maxwell

James B. Maxwell

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CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing Defendants', James T. Soupkup, Kammie Michael, David W. Addison and Richard D. Clayton, Motion to Dismiss Plaintiffs' Second Amended Complaint with the Clerk of Court using the CM/ECF system which will send notification to the following:

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This the 10th day of March, 2010.

/S/James B. Maxwell

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